

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512



DATE: August 3, 2009

TO: Interested Parties

FROM: Mary Dyas, Compliance Project Manager

**SUBJECT: VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-1C)
STAFF ANALYSIS OF PROPOSED MODIFICATIONS TO CONDITION
OF CERTIFICATION BIO-11**

On June 1, 2009, the city of Victorville filed a petition with the California Energy Commission to amend the Energy Commission Decision for the Victorville 2 Hybrid Power (VV2) Project. Staff prepared an analysis of this proposed change, and a copy is enclosed for your information and review.

The VV2 project is a 563 megawatt hybrid of natural gas-fired combined cycle generating equipment integrated with solar thermal generating equipment, in the city of Victorville, San Bernardino County. The project was certified by the Energy Commission on July 16, 2008 and plans to begin construction in the first quarter of 2010.

The proposed modifications will extend the compliance dates by which the project may provide the letter of credit or other form of security and the date the project must acquire compensation lands.

Energy Commission staff reviewed the petition and assessed the impacts of this proposal on environmental quality, public health and safety, and proposes revisions to existing conditions of certification for BIO-11. It is staff's opinion that, with the implementation of revised conditions, the project will remain in compliance with applicable laws, ordinances, regulations, and standards and that the proposed modifications will not result in a significant adverse direct or cumulative impact to the environment (Title 20, California Code of Regulations, Section 1769).

The amendment petition and staff's analysis has been posted on the Energy Commission's webpage at <http://www.energy.ca.gov/sitingcases/victorville2/compliance/index.html>. The Energy Commission's Order (if approved) will also be posted on the webpage. Energy Commission staff intends to recommend approval of the petition at the September 9, 2009, Business Meeting of the Energy Commission. If you have comments on this proposed modification, please submit them to me at the address below by September 4, 2009.

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Interested Parties

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Comments may be submitted by fax to (916) 654-3882, or by e-mail to mdyas@energy.state.ca.us. If you have any questions, please contact me at (916) 651-8891.

For further information on how to participate in this proceeding, please contact the Energy Commission Public Adviser's Office, at (916) 654-4489, or toll free in California at (800) 822-6228, or by e-mail at publicadviser@energy.state.ca.us. News media inquiries should be directed to the Energy Commission Media Office at (916) 654-4989, or by e-mail at mediaoffice@energy.state.ca.us.

Enclosure

VICTORVILLE 2 HYBRID POWER PROJECT (07-AFC-1C)
Request to Amend Condition of Certification BIO-11
BIOLOGICAL RESOURCES Staff Analysis
Prepared by: Misa Milliron

INTRODUCTION

The city of Victorville (City) is seeking approval to modify the Victorville 2 Hybrid Power Project (VV2) by amending Condition of Certification **BIO-11** to extend the date by which the project may provide the letter of credit or other form of security from "prior to commencing ground-disturbing activities or within 12 months of the issuance of the Final Decision, whichever occurs first" to "prior to ground-disturbing activities." The City is also requesting approval to modify the Verification for **BIO-11** to extend the date for compensation land acquisition from "no later than 12 months following the publication of the Energy Commission Decision" to "no later than 12 months following the commencement of ground disturbance."

The 563-megawatt project was certified by the Energy Commission on July 16, 2008. Construction is anticipated to begin in early 2010.

LAWS, ORDINANCES, REGULATIONS AND STANDARDS (LORS) COMPLIANCE

At the time of certification, LORS applicable to Biological Resources were identified in staff's Final Staff Assessment (FSA). Approval of the amendment would not require analysis or inclusion of any new LORS.

ANALYSIS

The petition to amend is a request to amend Condition of Certification **BIO-11** to extend the date by which the project may provide the letter of credit or other form of security from "prior to commencing ground-disturbing activities or within 12 months of the issuance of the Final Decision, whichever occurs first" to "prior to ground-disturbing activities" and modify the Verification for **BIO-11** to extend the date for compensation land acquisition from "no later than 12 months following the publication of the Energy Commission Decision" to "no later than 12 months following the commencement of ground disturbance." Energy Commission staff reviewed the petition and assessed the impacts of this amendment on **BIO-11**.

Staff discussed the requested amendment with the Department of Fish and Game (CDFG) staff. Staff, with input from CDFG staff, has proposed alternate wording for the changes proposed by the project owner.

CONCLUSIONS AND RECOMMENDATIONS

Staff has reviewed the petition for potential environmental effects and consistency with applicable LORS. Based on this review, staff determined that the amendment, with staff's proposed changes, would be consistent with the LORS identified in staff's 2008

FSA. Staff proposes the modification of Condition of Certification **BIO-11**, as shown below.

PROPOSED MODIFICATIONS TO CONDITIONS OF CERTIFICATION

Staff has proposed modifications to the **BIOLOGICAL RESOURCES** conditions of certification as shown below. (Note: deleted text is in ~~strikethrough~~, and new text is underlined).

Desert Tortoise, Mohave Ground Squirrel, Burrowing Owl, and Creosote ring Compensation

BIO-11 To compensate for temporary and permanent impacts to desert tortoise, Mohave ground squirrel, burrowing owl, creosote rings, and their habitat, the project owner shall implement a habitat compensation strategy that guarantees the perpetual care of at least 1,315.5 acres of off-site habitat in the region of the proposed project. The selected compensation land must be suitable for all three special-status species and creosote rings as determined by the CPM through consultation with the Mohave ground squirrel technical advisory group, CDFG, other technical advisory groups recommended by CDFG, and USFWS.

The project owner shall attempt to acquire parcels that are as contiguous as possible in the same timeframe rather (i.e., avoid significantly separated parcels and “piecemeal” acquisition). This mitigation acreage shall not overlap with other previously planned compensation land requirements set aside for other city projects. As part of this condition, project owner shall:

1. Transfer fee title for the habitat compensation lands or a conservation easement over the habitat compensation lands to CDFG or to a third party non-profit habitat conservation organization (hereafter referred to as “third party”), such as DTPC, with experience in acquiring and protecting desert tortoise, Mohave ground squirrel, and burrowing owl habitat, approved by the CPM, in consultation with CDFG, under terms approved by the CPM. No third party shall be approved by the CPM until after the CPM has reviewed the third party’s management plan. In the alternative, if approved by the CPM, the project owner may provide a check or a letter of credit to CDFG with a copy to the CPM in an amount deemed sufficient by the CPM, in consultation with CDFG, for acquisition of the habitat compensation lands identified in this condition of certification.
2. Provide to the third party or CDFG a check in the amount acceptable to the CPM, in consultation with CDFG, drawn from a banking institution located within California, for use as principal for a permanent, non-wasting capital endowment. The endowment amount shall be determined through a PAR analysis. Interest from this amount shall be available for the operation, management and protection of the habitat compensation lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the habitat compensation lands. The endowment principal shall not be drawn upon

unless such withdrawal is deemed necessary by the CPM, in consultation with CDFG, to ensure the continued viability of the species on the habitat compensation lands. The CPM, in consultation with CDFG, will decide how the funds will be spent. Monies received by CDFG pursuant to this provision shall be deposited in a special deposit account established pursuant to Fish and Game Code section 13014.

3. The project owner shall provide to the third party or CDFG funds for the initial protection and enhancement of the habitat compensation lands, if the PAR analysis indicates that such activities are needed for the specific parcels selected. The amount required for initial protection and enhancement needs to be approved by the CPM, in consultation with CDFG, once the project owner identifies the habitat compensation lands. Alternatively, project owner may fund CDFG's initial protection and enhancement of the lands by providing the funds required for the initial protection and enhancement as determined by the CPM, in consultation with CDFG, to CDFG.

The project owner may proceed with ground-disturbing project activities before completing all of the required mitigation (including acquisition of habitat compensation lands), monitoring, and reporting activities only if the project owner ensures funding to complete those activities by providing to the CPM and CDFG prior to commencing ground-disturbing activities: an irrevocable letter of credit, a pledged savings account, or another form of security ("Security") approved by the Office of the General Counsel at the Energy Commission, in consultation with CDFG, in the amount necessary to ensure that all funds required pursuant to 1 – 3 above are available. The Security shall allow the Energy Commission and CDFG, to draw on the principal sum if the CPM, in consultation with CDFG, determines that project owner has failed to comply with the conditions of certification.

Verification: Thirty (30) days prior to commencing ground-disturbing project activities, the project owner will provide proof of mitigation funding in the form of an irrevocable letter of credit, a pledged savings account, or another form of approved security.

No later than 12 months following the commencement of ground disturbance, the project owner will provide written verification to the CPM that the habitat compensation purchase has been completed. At the same time, the project owner will provide a certified check for the endowment and for initial protection and restoration activities, if required, to the third party **or** CDFG and written verification to the CPM that the check has been provided. Within six months of the land purchase (as determined by the date on title), the project owner shall provide the CPM a management plan for the habitat compensation lands and associated funds for review and approval in consultation with CDFG. Within 90 days after completion of project construction, the project owner shall provide the CPM aerial photographs taken after construction and an analysis of the amount of any habitat disturbance additional to that identified in this staff assessment. The CPM will notify the project owner of any additional funds required to compensate for any additional habitat disturbances at the adjusted market value at the time of construction to acquire and manage habitat.

REFERENCES

VV2 (Victorville 2 Hybrid Power Project) 2007a – Application for Certification. Submitted to the California Energy Commission on February 28, 2007.

VV2 (Victorville 2 Hybrid Power Project) 2009a – Petition to Amend Final Commission Decision (07-AFC-1). Submitted to the California Energy Commission on June 1, 2009.